

September 24, 2004

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Brian Charles

Date of Filing: August 11, 2004

Case Number: TFA-0068

On August 11, 2004, Brian Charles (Charles) filed an Appeal from a determination issued to him on July 8, 2004, by the Richland Operations Office (Richland) of the Department of Energy (DOE) in response to a request for documents that Charles submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require that Richland perform an additional search for responsive material.

I. Background

On June 10, 2004, Charles filed a FOIA request with the Pacific Northwest National Laboratory (PNNL) for the names and addresses of any officials at PNNL “whose job it is to remediate radioactive nuclear waste by applying any technology to lower or eliminate radioactivity.” Letter from Richland to Charles (July 8, 2004) (Determination Letter). PNNL forwarded the request to Richland for a response. In the Determination Letter, Richland stated that it “conducted a thorough search and no documents were located.” *Id.* However, in order to assist Charles with his research, Richland suggested that he visit the following website: www.pnl.gov/main/sectors/nuclear.html. In the Appeal, Charles challenged the adequacy of the search and asks OHA to direct Richland to search again for responsive information.

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). “The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is

evident that the search conducted was in fact inadequate. *See, e.g., Glen Milner*, 17 DOE ¶ 80,102 (1988).

Richland informed us that PNNL had searched its Human Resources Department, including job descriptions, but found no list of names that would be responsive to Charles' request. *See* Memorandum of Telephone Conversation between Dorothy Riehle, Richland, and Valerie Vance Adeyeye, OHA (September 8, 2004); Electronic Mail Message from Dorothy Riehle, Richland to Valerie Vance Adeyeye, OHA (September 21, 2004). In fact, none of the descriptions stated that any employees are assigned to do remediation. ^{*/} Richland did not, and the FOIA does not require it to, create a record to comply with Charles' request. Determination Letter. However, the PNNL website explains how PNNL performs the remediation of nuclear waste. Richland suggested that the requester contact PNNL directly via mail, or send an email to the webmaster of the site. We reviewed the PNNL website and found a web page entitled "Effectively Processing Radioactive Wastes." The page is located at www.pnl.gov/etd/solutions/radwaste.htm and it contains the name, telephone number, fax number, and email address of a PNNL contact for further information. We will provide this information to the requester in the event that he does not have ready access to the Internet. After reviewing the record of this case, we find that Richland conducted a search that was reasonably calculated to uncover the requested information. Accordingly, this Appeal is denied.

It Is Therefore Ordered That:

- (1) The Freedom of Information Act Appeal filed by Brian Charles on August 11, 2004, OHA Case Number TFA-0068, is hereby denied.
- (2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the

^{*/} The requester assumed that the lack of responsive material demonstrated that no one at PNNL is remediating nuclear waste. Letter from Charles to Director, OHA (August 11, 2004). That is not true – Richland's unsuccessful search merely reflects the absence of an existing list of PNNL employees who are assigned to remediate nuclear waste.

requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: September 24, 2004